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7 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

8
9 MARIA RUIZ,

10 Plaintiff,

11 v.

12 NANCY A. BERRYHILL, Deputy
Commissioner of Social Security for
Operations,

13 Defendant.
14

NO. C17-1437-JPD

ORDER

15 Plaintiff Maria Ruiz appeals the final decision of the Commissioner of the Social
16 Security Administration (“Commissioner”) that denied her application for Supplemental
17 Security Income (“SSI”) under Title XVI of the Social Security Act, 42 U.S.C. §§ 1381-83f,
18 after a hearing before an administrative law judge (“ALJ”). For the reasons set forth below,
19 the Court REVERSES the Commissioner’s decision and REMANDS this matter for further
20 administrative proceedings.

21 I. FACTS AND PROCEDURAL HISTORY

22 Plaintiff is a 50-year-old woman with a 10th-grade education and some vocational
23 training, plus training as a licensed practical nurse. Administrative Record (“AR”) at 51-52,
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1 72-73. Her past work experience includes employment as a sales associate. AR at 298.

2 Plaintiff was last gainfully employed in 2013. AR at 281.

3 In October 2013, Plaintiff protectively applied for SSI, alleging an onset date of
4 December 1, 2004.¹ AR at 236-41. Plaintiff asserts that she is disabled due to depression,
5 anxiety, post-traumatic stress disorder (“PTSD”), and a back injury. AR at 297.

6 The Commissioner denied Plaintiff’s claim initially and on reconsideration. AR at 152-
7 60, 168-74. Plaintiff requested a hearing, which took place on February 10, 2016. AR at 43-
8 78. On June 1, 2016, the ALJ issued a decision finding Plaintiff not disabled and denied
9 benefits based on her finding that Plaintiff could perform a specific job existing in significant
10 numbers in the national economy. AR at 22-36. Plaintiff’s administrative appeal of the ALJ’s
11 decision was denied by the Appeals Council, AR at 8-13, making the ALJ’s ruling the “final
12 decision” of the Commissioner as that term is defined by 42 U.S.C. § 405(g). On September
13 21, 2017, Plaintiff timely filed the present action challenging the Commissioner’s decision.
14 Dkt. 1, 4.

15 II. JURISDICTION

16 Jurisdiction to review the Commissioner’s decision exists pursuant to 42 U.S.C. §§
17 405(g) and 1383(c)(3).

18 III. STANDARD OF REVIEW

19 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner’s denial of
20 social security benefits when the ALJ’s findings are based on legal error or not supported by
21 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th
22 Cir. 2005). “Substantial evidence” is more than a scintilla, less than a preponderance, and is

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24 ¹ Plaintiff subsequently amended her alleged onset date to October 14, 2013. AR at 45, 348.

1 such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
2 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750
3 (9th Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in
4 medical testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*,
5 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a
6 whole, it may neither reweigh the evidence nor substitute its judgment for that of the
7 Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is
8 susceptible to more than one rational interpretation, it is the Commissioner's conclusion that
9 must be upheld. *Id.*

10 IV. EVALUATING DISABILITY

11 As the claimant, Ms. Ruiz bears the burden of proving that she is disabled within the
12 meaning of the Social Security Act (the "Act"). *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th
13 Cir. 1999) (internal citations omitted). The Act defines disability as the "inability to engage in
14 any substantial gainful activity" due to a physical or mental impairment which has lasted, or is
15 expected to last, for a continuous period of not less than twelve months. 42 U.S.C. §§
16 423(d)(1)(A), 1382c(a)(3)(A). A claimant is disabled under the Act only if her impairments
17 are of such severity that she is unable to do her previous work, and cannot, considering her age,
18 education, and work experience, engage in any other substantial gainful activity existing in the
19 national economy. 42 U.S.C. §§ 423(d)(2)(A); *see also Tackett v. Apfel*, 180 F.3d 1094, 1098-
20 99 (9th Cir. 1999).

21 The Commissioner has established a five step sequential evaluation process for
22 determining whether a claimant is disabled within the meaning of the Act. *See* 20 C.F.R. §§
23 404.1520, 416.920. The claimant bears the burden of proof during steps one through four. At
24 step five, the burden shifts to the Commissioner. *Id.* If a claimant is found to be disabled at

1 any step in the sequence, the inquiry ends without the need to consider subsequent steps. Step
2 one asks whether the claimant is presently engaged in “substantial gainful activity.” 20 C.F.R.
3 §§ 404.1520(b), 416.920(b).² If she is, disability benefits are denied. If she is not, the
4 Commissioner proceeds to step two. At step two, the claimant must establish that she has one
5 or more medically severe impairments, or combination of impairments, that limit her physical
6 or mental ability to do basic work activities. If the claimant does not have such impairments,
7 she is not disabled. 20 C.F.R. §§ 404.1520(c), 416.920(c). If the claimant does have a severe
8 impairment, the Commissioner moves to step three to determine whether the impairment meets
9 or equals any of the listed impairments described in the regulations. 20 C.F.R. §§ 404.1520(d),
10 416.920(d). A claimant whose impairment meets or equals one of the listings for the required
11 twelve-month duration requirement is disabled. *Id.*

12 When the claimant’s impairment neither meets nor equals one of the impairments listed
13 in the regulations, the Commissioner must proceed to step four and evaluate the claimant’s
14 residual functional capacity (“RFC”). 20 C.F.R. §§ 404.1520(e), 416.920(e). Here, the
15 Commissioner evaluates the physical and mental demands of the claimant’s past relevant work
16 to determine whether she can still perform that work. 20 C.F.R. §§ 404.1520(f), 416.920(f). If
17 the claimant is able to perform her past relevant work, she is not disabled; if the opposite is
18 true, then the burden shifts to the Commissioner at step five to show that the claimant can
19 perform other work that exists in significant numbers in the national economy, taking into
20 consideration the claimant’s RFC, age, education, and work experience. 20 C.F.R. §§
21 404.1520(g), 416.920(g); *Tackett*, 180 F.3d at 1099, 1100. If the Commissioner finds the

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23 ² Substantial gainful activity is work activity that is both substantial, i.e., involves
24 significant physical and/or mental activities, and gainful, i.e., performed for profit. 20 C.F.R. §
404.1572.

1 claimant is unable to perform other work, then the claimant is found disabled and benefits may
2 be awarded.

3 V. DECISION BELOW

4 On June 1, 2016, the ALJ issued a decision finding the following:

- 5 1. The claimant has not engaged in substantial gainful activity since
6 October 14, 2013, the alleged onset date.
- 7 2. The claimant has the following severe impairments: hemorrhoids,
8 cervical spine disorder, depressive disorder, and PTSD.
- 9 3. The claimant does not have an impairment or combination of
10 impairments that meets or medically equals the severity of one of the
11 listed impairments in 20 CFR Part 404, Subpart P, Appendix 1.
- 12 4. The claimant has the residual functional capacity to perform light
13 work as defined in 20 CFR 416.967(b) except she can lift and or carry
14 20 pounds occasionally and 10 pounds frequently; she can stand and
15 or walk with normal breaks 6 hours in an 8-hour workday; sit with
16 normal breaks for 6 hours in an 8-hour workday; occasionally climb
17 ramps and stairs; never climb ladders, ropes, or scaffolds; occasionally
18 balance, stoop, kneel, crouch, and crawl; avoid concentrated exposure
19 to extreme cold and vibration, and hazardous machinery and heights;
20 and perform simple repetitive tasks. She can have limited contact with
21 the public; and she can have interaction with a limited number of
22 coworkers of no more than 10 but no work in coordination with them.
- 23 5. The claimant has no past relevant work.
- 24 6. The claimant was born on XXXXX, 1968 and was 36 years old, which
is defined as a younger individual age 18-49, on the alleged disability
onset date.³
7. The claimant has a limited education and is able to communicate in
English.
8. Transferability of job skills is not an issue because the claimant does
not have past relevant work.
9. Considering the claimant's age, education, work experience, and
residual functional capacity, there are jobs that exist in significant
numbers in the national economy that the claimant can perform.

³ The actual date is deleted in accordance with Local Rule CR 5.2, W.D. Washington.

1 conclusions. “He must set forth his own interpretations and explain why they, rather than the
2 doctors’, are correct.” *Id.* (citing *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988)).
3 Such conclusions must at all times be supported by substantial evidence. *Reddick*, 157 F.3d at
4 725.

5 The opinions of examining physicians are to be given more weight than non-examining
6 physicians. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). Like treating physicians, the
7 uncontradicted opinions of examining physicians may not be rejected without clear and
8 convincing evidence. *Id.* An ALJ may reject the controverted opinions of an examining
9 physician only by providing specific and legitimate reasons that are supported by the record.
10 *Bayliss*, 427 F.3d at 1216.

11 Opinions from non-examining medical sources are to be given less weight than treating
12 or examining doctors. *Lester*, 81 F.3d at 831. However, an ALJ must always evaluate the
13 opinions from such sources and may not simply ignore them. In other words, an ALJ must
14 evaluate the opinion of a non-examining source and explain the weight given to it. Social
15 Security Ruling (“SSR”) 96-6p, 1996 WL 374180, at *2. Although an ALJ generally gives
16 more weight to an examining doctor’s opinion than to a non-examining doctor’s opinion, a
17 non-examining doctor’s opinion may nonetheless constitute substantial evidence if it is
18 consistent with other independent evidence in the record. *Thomas*, 278 F.3d at 957; *Orn*, 495
19 F.3d at 632-33.

20 In order to determine whether a claimant is disabled, an ALJ may also consider lay-
21 witness sources, such as testimony by nurse practitioners, physicians’ assistants, and counselors,
22 as well as “non-medical” sources, such as spouses, parents, siblings, and friends. *See* 20 C.F.R.
23 § 404.1527(f). Such testimony regarding a claimant’s symptoms or how an impairment affects
24 his/her ability to work is competent evidence, and cannot be disregarded without comment.

1 *Dodrill v. Shalala*, 12 F.3d 915, 918-19 (9th Cir. 1993). This is particularly true for such non-
2 acceptable medical sources as nurses and medical assistants. *See* Social Security Ruling (“SSR”) 06-03p (noting that because such persons “have increasingly assumed a greater percentage of the
3 treatment and evaluation functions previously handled primarily by physicians and
4 psychologists,” their opinions “should be evaluated on key issues such as impairment severity
5 and functional effects, along with the other relevant evidence in the file.”). If an ALJ chooses to
6 discount testimony of a lay witness, he must provide “reasons that are germane to each witness,”
7 and may not simply categorically discredit the testimony. *Dodrill*, 12 F.3d at 919.

9 B. The ALJ erred in assessing the opinion of examining psychologist Margaret Dolan, Ph.D.

10 Dr. Dolan examined Plaintiff in October 2014, and reviewed another psychological
11 examination report from earlier in the year. AR at 585-95. She described Plaintiff’s
12 “functioning level at work” as follows:

13 She could probably manage a simple job with sensitive supervision. She would
14 need to feel physically safe. Her most difficult problem would be planning how
15 to seek a job and executing the plan over time. She is extremely passive and
16 has great difficulty motivating herself to act. Vocational training might improve this, or help place her. She does enjoy activity and a sense of usefulness. She worked steadily in the past before her widowhood and accident.

17 AR at 593. The ALJ gave “partial weight” to Dr. Dolan’s opinion, crediting her opinion that
18 Plaintiff could perform simple tasks, but rejecting Dr. Dolan’s opinion that Plaintiff required
19 “sensitive supervision” as “vague” and “provid[ing] no insight into [her] functioning.” AR at
20 33.

21 Plaintiff argues that Dr. Dolan’s report as a whole explains her opinion that Plaintiff
22 required “sensitive supervision.” Dkt. 10 at 4. She posits that Dr. Dolan meant that she could
23 not work independently and would instead require special supervision. Dkt. 10 at 6.

1 The Commissioner does not respond to Plaintiff's argument, and instead offers a
2 number of reasons why Dr. Dolan's opinion should not have been credited, most of which
3 were not mentioned by the ALJ. Specifically, the Commissioner contends that the record did
4 not document any problems Plaintiff had had with past supervisors or other authority figures,
5 and that Dr. Dolan likely premised her opinion on Plaintiff's discredited subjective complaints.
6 Dkt. 11 at 13-14. This argument does not address Plaintiff's challenge to the ALJ's stated
7 reasoning, which was that Dr. Dolan's opinion contained a vague limitation to sensitive
8 supervision; the Commissioner noted the ALJ's stated reasoning, but did not explain how the
9 finding of vagueness was legitimate.

10 The Court finds that Plaintiff's argument has merit. In other parts of her opinion, Dr.
11 Dolan references Plaintiff's inability to work independently. *See, e.g.*, AR at 593 ("[Plaintiff]
12 would not manage to function independently on a job; she might function well with support
13 and direction"), 594 ("[Plaintiff seems to have become increasingly unable to function
14 independently without external support and direction]"). Even if the adjective "sensitive" is
15 vague and not vocationally relevant (see AR at 76-77), Dr. Dolan's opinion indicates a need
16 for additional supervision, which the ALJ's RFC assessment does not mention. The need for
17 additional supervision is not vague and does pertain to Plaintiff's functioning, and thus the
18 ALJ's stated reason for rejecting Dr. Dolan's opinion in this regard is not legitimate. On
19 remand, the ALJ shall reconsider the entirety of Dr. Dolan's opinion and either credit it or
20 provide legally sufficient reasons to discount it.

21 C. The ALJ erred in assessing the opinion of examining psychologist David Widlan, Ph.D.

22 Dr. Widlan examined Plaintiff in February 2014 and completed a DSHS form opinion.
23 AR at 505-14. Dr. Widlan opined that Plaintiff had moderate limitations in many functional
24 areas, and marked limitations in a few functional areas. AR at 507. Most of his mental status

1 examination findings were within normal limits, except for noting some concentration deficits.
2 AR at 508-09. The ALJ gave little weight to Dr. Widlan's opinion, finding it inconsistent with
3 treatment notes showing "stable mood and anxiety with treatment." AR at 32-33.

4 The Commissioner cites several treatment notes as evidence that Plaintiff
5 "consistently" had stable mood and anxiety with treatment. Dkt. 11 at 15 (citing AR at 669,
6 671, 674, 694, 704, 719, 731). Not all of these citations document stable mood and anxiety,
7 however. *See, e.g.*, AR at 674 (reports of anxiety and crying spells), 694 (describing Plaintiff's
8 grief related to her father's death), 704 (describing Plaintiff's reports of feeling sad), 719
9 (describing Plaintiff as still grieving, but not suicidal), 731 (describing Plaintiff as being tearful
10 with depressed mood). It does not appear that the treatment record consistently describes
11 Plaintiff as having a stable mood and anxiety, and therefore the ALJ's reasoning is not
12 supported by substantial evidence. On remand, the ALJ shall reconsider Dr. Widlan's opinion
13 and either credit it or provide legally sufficient reasons to discount it.

14 D. The ALJ erred in discounting the opinion of treating counselor Min Lee Booth, LMHC.

15 Ms. Booth completed a form opinion regarding Plaintiff's application for DSHS
16 benefits in January 2014, indicating that she could work up to 15 hours per week with
17 "supportive employment services," but that there was "no conclusive evidence to indicate she
18 could perform effectively in a work setting" due to her deficits in dealing with workplace stress
19 and interacting with others. AR at 520-22.

20 The ALJ noted that Ms. Booth is not an acceptable medical source, and that she cited
21 no objective evidence to support her opinion. AR at 33. The ALJ also noted that Plaintiff's
22 work history consisted of seasonal/part-time work, and that she did not work full-time even
23 "before her alleged symptoms." *Id.* The ALJ further mentioned that Plaintiff's mental status
24 examinations show stable depression and anxiety with medication. *Id.*

1 It is true that Ms. Booth did not cite any objective evidence to support her opinion, and
2 the ALJ generally found that mental status examinations showed that Plaintiff's symptoms
3 were stable. Many of Ms. Booth's own treatment notes, however, describe Plaintiff's mood as
4 depressed, anxious, or "depressed/anxious." *See, e.g.*, AR at 704, 708, 712, 715, 716, 717,
5 731, 738, 745, 746, 748, 757, 760, 761, 764, 773, 775, 778, 783, 787, 793, 795, 801, 802, 816,
6 829. It was not reasonable for the ALJ to focus on a few mental status examinations, which
7 were performed only sporadically, rather than Ms. Booth's own treatment notes, when
8 considering whether her opinion was supported by objective evidence and/or consistent with
9 the record.

10 Furthermore, it is unclear what the ALJ inferred from Plaintiff's work history, with
11 respect to Ms. Booth's opinion, and the Commissioner does not defend this line of reasoning.
12 *See* Dkt. 11 at 17-18. Therefore, the Court finds that the ALJ's reasons to discount Ms.
13 Booth's opinion are not germane.

14 On remand, the ALJ shall reconsider Ms. Booth's opinion and either credit it or provide
15 legally sufficient reasons to discount it.

16 E. The ALJ did not err in discounting opinions from treating clinician Marfe Paluga,
17 ARNP.

18 Ms. Paluga completed two form opinions describing Plaintiff's symptoms and
19 workplace limitations, in January 2014 and September 2015. AR at 499-504, 686-88. In
20 January 2014, Ms. Paluga indicated that Plaintiff was limited to working 21-30 hours per week
21 due to social limitations, decreased tolerance to workplace stress, and significant anxiety. AR
22 at 502-04. In September 2015, Ms. Paluga opined that Plaintiff could work only 1-10 hours
23 per week due to her mental health issues, which limit her ability to socially interact
24 appropriately. AR at 686-88.

1 The ALJ found that Ms. Paluga's opinions were inconsistent with the treatment record,
2 which showed Plaintiff's anxiety stabilized with medication, and that her social limitations
3 were only mild. AR at 32. The ALJ listed a number of Plaintiff's social activities, which she
4 found to contradict Ms. Paluga's description of Plaintiff's more limiting social deficits. *Id.*

5 Plaintiff argues that because Ms. Paluga treated her, she was aware of her treatment
6 record, and that none of the social activities described by the ALJ proved that she could work
7 full-time. Dkt. 10 at 9-10. But the fact that Ms. Paluga may be aware of Plaintiff's treatment
8 history does not necessarily indicate that her opinion is consistent with that history: Ms. Paluga
9 herself described Plaintiff's anxiety as controlled with medication and indicated that she was
10 stable and/or doing better overall, in 2014 and 2015. *See* AR at 669, 671-72, 654.

11 Furthermore, the ALJ reasonably found that Plaintiff's ability to take citizenship
12 classes, travel internationally, participate in group activities at church, spend time with family
13 and neighbors, and spend time with her daughter in public indicates that she is capable of more
14 social interaction than described by Ms. Paluga. AR at 32. The ALJ provided germane
15 reasons to discount Ms. Paluga's opinions, and the Court therefore affirms the ALJ's
16 assessment of those opinions.

17 F. The ALJ did not err in discounting the opinion of treating physician Chinyere Obimba,
18 M.D.

19 Dr. Obimba completed a form opinion in support of Plaintiff's application for DSHS
20 benefits in October 2015. AR at 683-85. Dr. Obimba opined that Plaintiff's low back pain and
21 hemorrhoids limited her to 11-20 hours of work per week, and that she was unable to lift at two
22 pounds or was unable to stand/walk. *Id.*


23 The ALJ gave little weight to Dr. Obimba's opinion, finding that she did not cite any
24 objective evidence or explanation for her opinion. AR at 33-34. The ALJ also found that Dr.

1 Obimba relied on Plaintiff's self-reported statements in rendering her opinion. *Id.* These
2 findings are consistent with Dr. Obimba's contemporaneous treatment notes, cited by the ALJ:
3 it appears that Plaintiff described the limitations that Dr. Obimba listed in her opinion. *See* AR
4 at 613. The ALJ's findings regarding Plaintiff's subjective testimony were not challenged in
5 this appeal, and under these circumstances, the ALJ was entitled to discount an opinion
6 rendered in reliance on self-report. *See Bray v. Comm'r of Social Sec. Admin.*, 554 F.3d 1219,
7 1228 (9th Cir. 2009) ("As the ALJ determined that Bray's description of her limitations was
8 not entirely credible, it is reasonable to discount a physician's prescription that was based on
9 those less than credible statements."). Because the ALJ provided a specific, legitimate reason
10 to discount Dr. Obimba's opinion, the Court affirms the ALJ's assessment of Dr. Obimba's
11 opinion.

12 VIII. CONCLUSION

13 For the foregoing reasons, the Court REVERSES the Commissioner's decision and
14 REMANDS this case to the Commissioner for further proceedings not inconsistent with the
15 Court's instructions.

16 DATED this 22nd day of June, 2018.

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18 JAMES P. DONOHUE
19 United States Magistrate Judge
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